THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.14829 of 2001

Date: 09.08.2007

Between:
Gontureddy Nageswara Rao @ China Nageswara Rao
S/o Ganganna, aged about 56 years
East Lakshmipuram, Yelleswaram Mandal
East Godavari District

…. Petitioner

And:

The Government of Andhra Pradesh
Rep.by its Secretary, Social Welfare (LTR.2) Dept.,
Secretariat, Hyderabad & 4 others

…. Respondents

THE HON'BLE SRI JUSTICE V.V.S. RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

W.P.No.14829 of 2001

ORDER: (Per Hon'ble Sri Justice G.V.Seethapathy,J)

This writ petition is filed challenging the impugned order G.O.Ms.No.3 dated 02.01.2001 passed by the first respondent confirming the orders dated 23.6.1997 of the 2nd respondent in CMA No.25 of 1994 and directing eviction of the petitioner and ordering resumption of the subject land to the Government.

2. The petitioner claims to be the owner and in possession of an extent of Ac.2.46 cents in Survey No.56/4 and Ac.1.45 cents in Survey No.51/3 in Sarampetapadu, Addatigala Taluq of East Godavari district situated in scheduled area. According to the petitioner, the said land was in possession and enjoyment of his forefathers since more than 100 years and he himself has been cultivating the same since more than 35 years. The petitioner, who is a non-tribal, claims to have purchased the land from Somisetti Ramayya, Satyanarayana and Veeraswamy sons of Kondayya, who are also non-tribals by an agreement of sale dated 26.12.1969 and subsequently a registered sale deed was executed on 15.8.1973. The land originally stood in the name of Jartha Chinakamayya, who was also non-tribal from whom Somisetti Bullayya and Kondaiah purchased in 1907 and from their successors, the petitioner purchased the land. While so, the Special Deputy Tahsildar (TW)-4th respondent *suo-motu* initiated proceedings under A.P. Scheduled Area Land Transfer Regulation 1959 (for short 'Regulation') on the premise that the transaction was entered into between non-tribals subsequent to coming into force of amendment to Regulation and the Special Deputy Collector (TW) Ramachandrapuram-3rd respondent took the said case on file as LTRP No.246/79 and 385/79. The petitioner participated in the enquiry and he was examined as RW.1 and the relevant RSR extracts and sale deeds were marked as Exs.B.1 to B.3. The Special Deputy Collector (TW) dismissed the said complaint on 24.4.1980 and the said order became final, as no appeal was preferred against the same.

The petitioner complains that again in 1994, the 4th respondent again filed a complaint under Section 3 of the Regulation for restoration of the scheduled land to the Government. The 3rd respondent took up the case as LTRP No.67 of 1993 and issued notices to the petitioner, who again deposed as RW.1 and adduced documentary evidence. The 3rd respondent allowed the complaint by order dated 30.6.1994 and directed the Mandal Revenue Officer-5th respondent, Addateegala to evict the petitioner from the scheduled land and take possession of the same for assigning to the eligible tribals. Aggrieved by the said order, the petitioner preferred an appeal before the 2nd respondent-Agent to the Government in CMA No.25 of 1994 and the said appeal was dismissed on 23.6.1997, rejecting the petitioner's contention that earlier order dated 24.4.1980 in LTRP No.246 of 1979 and 385 of 1979 operates as *res judicata* and subsequent complaint in LTR Case No.67 of 1993 was not maintainable. The petitioner filed a revision before the first respondent and the same was also dismissed by impugned G.O.Ms.No.3 dated 2.01.2001 directing eviction of the petitioner. Questioning the validity of the said order of the first respondent, the present writ petition is filed.

3. Arguments of the learned counsel for the writ petitioner and the learned Government Pleader for Social Welfare for respondents are heard. Records are perused.

4. Learned counsel for the petitioner contended that the earlier proceedings in LTRP No.246 of 1979 and 385 of 1979 and subsequent proceedings in LTRP No.67 of 1993 were between the same parties and were in respect of the same land and so, the order dated 24.4.1980 dropping the proceedings having become final, operates as *res judicata* and hence, subsequent proceedings are not maintainable. He would further contend that the eviction order dated 30.6.1994 passed by the Special Deputy Collector (TW) amounts to review of the earlier order dated 24.4.1980, wherein the proceedings were dropped on the ground that the transaction was between non-tribals and it took place long prior to coming into force of Regulation and such review is not contemplated under the Regulation and it is also not maintainable in view of the decision of a Division Bench of this Court in '***Chintalapati Ramalingaraju Vs. District Collector, Eluru***[1]'.

5. Learned Government Pleader for Social Welfare on the other hand contended that there was no finding in the earlier order regarding the nature of the transaction between the petitioner and his vendors and the alleged agreement of sale dated 26.12.1969 or the registered

sale deed dated 15.8.1973 in favour of the petitioner was not filed and so, there was no occasion to consider the validity of the transaction and hence, mere dropping of the earlier proceedings does not operate as *res judicata* and does not bar the subsequent proceedings, where fresh material was placed and further evidence was adduced as held in '***Gaddam Raghavulu Vs. Agent to Government (Dist. Collector), E.G. Dist., Kakinada and others***[2]'.

6. The petitioner, his vendors and their predecessors, admittedly are all non-tribals. It is not disputed that the scheduled land of Ac.2.46 cents in Survey No.56/4 and Ac.1.45 cents in Survey No.51/4, though situated in scheduled area, was never in possession of tribals. The said land was originally held by Jartha Chinakamayya as per RSR copy of the year 1902 and it was purchased by Somisetty Kondayya in 1907 and from his successors, the petitioner claims to have purchased under agreement of sale dated 26.12.1969 and a registered sale deed was executed subsequently on 15.8.1973. The petitioner contends that as the transaction was between non-tribals and effected on 26.12.1969, which is prior to 3.2.1970, the date on which Regulation came into force, the transaction is not hit by the Regulation. The respondents on the other hand contend that the sale transaction was effected on 15.8.1973, which is subsequent to coming into force of the Regulation and both vendor and vendee being non-tribals, the land is liable to be resumed by the Government for allotment to eligible tribals under the provisions of the Regulation.

7. It is not disputed that previously *suo-motu* proceedings were initiated by the Deputy Tahsildar, Addateegala before the Deputy Collector (TW) against the petitioner and his vendors in respect of self same land and the said proceedings were dropped by orders dated 24.4.1980 on the ground that the transaction was held between non-tribals prior to 1970. The petitioner contends that the said order operates as *res judicata* in subsequent proceedings, which are initiated again by the Special Deputy Tahsildar in LTRP No.67 of 1993 before the Deputy Collector wherein the order of eviction was passed on 30.6.1994. He also contends that the impugned proceedings amount to review of the earlier order dated 24.4.1980 dropping the proceedings in LTRP Nos.246 and 385 of 1979, which is impermissible under Law.

8. It is not disputed that the Regulation does not contemplate review of the order passed by any of the Authorities constituted therein. In ***'Chintalapati Ramalinga Raju's*** case (supra), a Division Bench of this Court held that 'it is well settled law that when a judgment is rendered under the Regulation, it becomes final and there is no review of the

same'. In fact, subsequent proceedings initiated by the Special Deputy Tahsildar in LTRP Case No.67 of 1993 are not in the nature of review of the earlier order dropping the proceedings in LTRP Case Nos.246 and 385 of 1979. Fresh proceedings were initiated against the petitioner herein pursuant to purchase of the land by the petitioner. The earlier order dated 24.4.1980 in LTRP Case Nos.246 and 385 of 1979 does not refer to the transaction in favour of the petitioner. The said order refers only to the transaction between Jartha Chinakamayya and Somisetti Kondayya and the same was up held on the ground that it took place in 1907 long prior to the Regulation coming in to force. The transaction between the sons of Kondaiah and the petitioner, which according to the petitioner took place in 1969 is not subjected to consideration in LTRP Case Nos.246 and 385 of 1979 and no reference is made either to the alleged agreement of sale dated 26.12.1969 or the registered sale deed dated 15.8.1973 between the sons of Kondaiah and the petitioner in the earlier order dated 24.4.1980. Though the petitioner was impleaded as 3rd respondent in LTRP Nos.246 and 385 of 1979, the order dated 24.4.1980 dropping the said proceedings does not disclose that the petitioner's claim for the land was adjudicated upon. Fresh proceedings were subsequently initiated pursuant to the alleged purchase of the land by the petitioner from the sons of Kondaiah in 1969. The respondents 1 to 3 in their respective orders have ignored the alleged agreement of sale dated 26.12.1969 and held that the purchase was made by the petitioner under the sale deed dated 15.8.1973, which is subsequent to coming into force of the Regulation and therefore, ordered eviction of the petitioner and directed resumption of the land to the Government. It cannot therefore be said that the impugned proceedings amount to review of the earlier order dated 24.4.1980, as the subsequent proceedings were initiated on a different cause of action and on different set of facts.

9. The question which then arises for consideration is whether the earlier order dated 24.4.1980 dropping the proceedings operates as *res judicata* in the subsequent enquiry in LTRP No.67 of 1993 and so the impugned proceedings are not sustainable?

10. Section 11 CPC, which enshrines the doctrine of *res judicata*, is in the following terms:

> "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a court of competent to try such subsequent suit or the suit in which such issue has been subsequently raised and

has been heard and finally decided by such court".

Rule 8 of A.P. Agency Laws 1924 is also couched in similar terms incorporating therein the doctrine of *res judicata*. One of the essential postulates for the applicability of the doctrine is that 'subject matter of issue in the subsequent proceedings had been directly and substantially in issue in the former proceedings and such issue had been heard and finally decided therein'. The basis on which the doctrine is founded is rooted in public policy, as it is apparently unjust and unreasonable to permit the same issue to be litigated afresh between the same parties or their privies. It is not sufficient if the two issues in the two proceedings are similar, but they must be the same. Physical identity of the subject mater alone does not make the doctrine applicable. There shall be identity of the subject matter in the juridical sense as well. The plea of *res judicata* cannot succeed unless the question of law or issue of fact arising in the subsequent proceeding was the subject matter of an issue heard and finally decided in the former proceeding between the same parties or their privies.

11. In the present case, no doubt the petitioner herein was a party to the earlier proceedings in LTRP Nos.246 and 385 of 1979 having been impleaded as 3rd respondent therein. The respondents 1 and 2 were his vendors. There is physical identity of the subject matter of the two proceedings in the sense that both of them pertain to the same land. However, as can be seen from the order dated 24.4.1980, the validity of the purchase of the land by the petitioner herein from the sons of Kondayya was not an issue at all. A careful scrutiny of the order dated 24.4.1980 of the Deputy Collector shows that on the basis of copy of RSR of the year 1902 standing in the name of Jartha Chinnayya and China Kamaiah and copy of the sale deed of 1907 by the said persons in favour of Somisetti Kondayya and copy of RSR of the year 1932 standing in the name of S.Kondayya and in the absence of any records to show that the lands were at any time under the cultivation of the tribals, it was held that the transaction between the non-tribals was prior to 1970 and therefore it was not hit by the Regulation. Though the petitioner herein was a party-respondent to the earlier proceedings, the validity of his purchase from the sons of Kondayya was not the subject matter of the dispute nor any finding given thereon in those earlier proceedings. The agreement of sale dated 26.12.1969 or the registered sale deed dated 15.8.1973 under which the petitioner claims to have purchased the property were not produced in the earlier proceedings. The purchase of the land by Kondayya and Bullayya from Jartha people in 1907 and their possession and enjoyment of the land in pursuance thereof alone was

the subject matter of the earlier proceedings and based on the evidence adduced before him, the Deputy Collector (TW) held that the said transaction between Jartha people and Somisetti people being prior to 1970 was not hit by the Regulation. Though the said proceedings were initiated in 1979 by which date, the petitioner claims to have purchased the land, the said transaction of purchase by petitioner from Somisetti people was not the subject matter of the earlier proceedings and no finding was recorded regarding the validity or otherwise of the said transaction. The finding recorded by the Deputy Collector (TW) in LTRP No.246 and 385 of 1979 to the effect that the transaction of purchase by Somisetti Kondayya and Bullayya from Jartha people is not hit by the Regulation does not operate as *res judicata* in the subsequent proceedings in LTRP No.67 of 1993, wherein the validity of Regulation by the successors of Somisetti people in favour of the petitioner, which is totally a different transaction was in dispute. Thus though there was identity of the subject matter in physical sense, the land being the same in both the proceedings, there was no identity in the juridical sense, as the transactions which were subject matter of dispute in the two proceedings are distinct and separate.

12. In '***Special Deputy Collector (TW), Rampachodavaram, E.G. District & others vs. Datla Venkatapathi Raju & others***[3]', a Division Bench of this Court held as follows:

> "The bar contained in sub-section (1) of Section 3 of the Regulation operates in presenti. Simply because in the earlier proceedings acquisition of the schedule lands by the 1st respondent/writ petitioner by way of transfer was held to be in order and legal, that circumstance itself would not come in the way of the statutory authority, like the 1st appellant, exercising the power conferred upon him under sub-sec.(2) of Section 3 of the Regulation, if he subsequently comes to know that the 1st respondent, after such acquisition, in turn, transferred the schedule lands in favour of third parties in breach of the bar contained in sub-section (1) of Section 3 of the Regulation".

13. In the above decision, an earlier decision of this Court in ***Gaddam Raghavulu's*** case (2nd supra) was referred wherein it was held as follows:

> "The principle of *res judicata* or a principle analogous thereto shall be applied with caution and circumspection in dealing with a case arising under the Regulation meant for the protection of the tribes. If the proceedings were dropped earlier for the reason that the 3rd respondent-tribal could not produce sufficient evidence, it

does not preclude a subsequent enquiry. Hence, I am not inclined to accept the contention of the learned counsel in this regard."

14. In '***N Durga Rao and another v. Special Deputy Collector (TW), Kota Ramachandrapuram, W.G. Dist. and others***[4]", this Court following the decision in ***Gaddam Raghavulu's*** case (2nd supra) held that 'the orders passed in the proceedings initiated under the Regulations should not be treated as *res judicata* in subsequent proceedings, if the latter were initiated by a different party, or by the same party, on the basis of any further material'. In the above case it was found that the Special Deputy Collector initiated earlier proceedings against the petitioner in SR.No.84/85 on the complaint made by the Special Deputy Tahsildar. Through orders dated 14.3.1995, it was held that 'the purchase made by the petitioners did not contravene the Regulation'. Subsequently, the Special Deputy Collector has taken up the proceedings once again on the complaint of the Special Deputy Tahsildar in SR.Nos.28 of 2000 and 26 of 2002 and directed resumption of the land holding that the purchases made by them were in contravention of the regulations. On perusal of the impugned order, it was found that 'the Special Deputy Tahsildar did not furnish any additional material to the first respondent and earlier order passed in SR No.84 of 1985 was very elaborate, wherein the merits of the matter were discussed at length, whereas in the orders under challenge, there was hardly any discussion on these aspects and even the fact that there was an earlier proceedings regarding the same land was not even noticed'. Under those circumstances, this Court held that 'there was no basis for the Special Deputy Collector to entertain the complaint and pass the impugned order. Accordingly the impugned order directing the resumption of the land was set aside'. It can be seen that in the above case, the same transaction happened to be the subject matter of dispute in both proceedings and it was held that the earlier order dropping the further proceedings which was passed on detailed examination of the issue operates as *res judicata* in the subsequent proceedings in which the self same issue was once again raised.

15. In the present case, the transactions, which are subject matter of the two proceedings, are totally different, though in respect of the same land. It is not as though the earlier order went unnoticed in the subsequent proceedings. As can be seen from the order dated 23.6.1997 in CMA No.25 of 1994, the appellant therein (petitioner herein) contended that the earlier order dated 24.4.1980 operates as *res judicata*, whereas the respondents contended that the subject

matter of the issue in the subsequent LTRP No.67 of 1993 did not fall for consideration in the earlier LTRP Nos.246 and 385 of 1979 and hence, the principle of *res judicata* has no application. The decision in ***N.Durga Rao's*** case (4th supra) has therefore no application to the facts of the present case.

16. In '***Mallaina Venkatarao v. District Collector, W.G. District, Eluru & others***[5]', this Court following the decision of the Division Bench in '***Datla Venkatapathi Raju's*** case (3rd supra), held that 'the principle of *res judicata* is not applicable, unless there was fresh material'. In the above case proceedings were initiated in SR No.776 of 1990 before the Special Deputy Collector (TW) under Section 3(2) (a) of the Regulation and after enquiry, it was concluded that the subject lands were never held by any Tribal at any point of time and therefore, there was no contravention of the provisions of the Regulation and accordingly by order dated 5.6.1991 disallowed the claim of the Special Deputy Tahsildar and the said order became final, as there was no appeal. Subsequently after lapse of 8 years, fresh complaint was filed in respect of the self same lands in SR No.58 of 1999 and an exparte order of ejectment was passed against the petitioner therein. This Court following the decision in ***C.Ramalingaraju's*** case (first supra) held that 'the order passed in the earlier proceedings cannot be reviewed in the absence of any enabling provision in the said Regulation'. It was further held that 'as no fresh material was placed in the subsequent enquiry, the earlier order, which attained finality, operates as *res judicata* and subsequent proceedings are incompetent'.

17. In the present case, fresh material was in fact placed before the Special Deputy Collector in the form of agreement of sale dated 26.12.1969 and the registered sale deed dated 15.8.1973 in favour of the petitioner and based thereon adjudication of the validity of the said transaction was undertaken for the first time in the 2nd proceedings i.e., LTRP No.67 of 1993. Hence, the above decision is also not applicable to the facts of the present case.

18. In an unreported decision in W.P.No.11865 of 2005 and 4431 of 2004 copy of which is filed by the learned counsel for the petitioner, this Court following the decision in ***Datla Venkatapathiraju's*** case (3rd supra), held that 'the principle of *res judicata* is not applicable to the proceedings initiated under the provisions of Regulation 1 of 1959 when the parties to the earlier proceedings and the present proceedings are different'. In the said decision it was also made clear

by the Division Bench that in the absence of any fresh material *suo motu* proceedings for review of the earlier order cannot be initiated. In such circumstances, subsequent proceedings reviewing the orders passed in the earlier proceedings are incompetent. In the above case, it was noticed that nothing has been placed before the Court to show any fresh material was made available.

19. In WP No.15322 of 2000, this Court by order dated 30.09.2005 copy of which is filed by the learned counsel for the petitioner, held that 'earlier proceedings in SR No.168 of 1981 were dropped by order dated 29.5.1982 on the ground that the transaction took place prior to the Regulation coming into force and the same was not in contravention of the Regulation and the said order has become final'. But subsequently in 1998 proceedings were again initiated by the very same officer in respect of very same land and on the very same allegations. It was held that 'when the earlier order dated 29.5.1982 became final, there is no jurisdiction for the respondents to pass further order and if the impugned order was allowed to stand, it amounts to review of the earlier order, which is not permissible under the Regulation'.

20. The above decision is also not applicable to the facts of the present case, for the reason that though subsequent proceedings were initiated by the same officer and in respect of the same land, it was however, not on the same allegations, inasmuch as the transaction of alienation in favour of the petitioner, which is impugned in the subsequent proceedings LTRP Case No.67 of 1993, was not subject matter of the dispute in the previous proceedings in LTRP Nos.246 and 385 of 1979 and no finding was recorded nor any decision made regarding the validity or otherwise of the said transaction vis-à-vis the regulation in the earlier proceedings. Under those circumstances, it cannot be held that the order dated 24.4.1980 passed in LTRP No.246 and 385 of 1979 operates as *res judicata* in the subsequent proceedings in LTRP No.67 of 1993.

21. Admittedly, the petitioner, a non-tribal purchased the subject land from the sons of Kondayya, who are also non-tribals under a registered sale deed dated 15.8.1973, which is subsequent to 3.2.1970 the date on which Regulation came into force. Though the petitioner claims that he originally purchased the land under agreement of sale on 26.12.1969, there is absolutely no evidence in support of the said claim. The impugned order dated 30.6.1994 in LTRP No.67 of 1993 passed by the Special Deputy Collector, directing eviction of the petitioner from the schedule land and ordering resumption of the same to the Government, which is subsequently

confirmed by the Agent to the Government in CMA No.25 of 1994 dated 23.6.1997 and also re-affirmed by the first respondent-Government in G.O.Ms.No.3 dated 2.1.2001 while dismissing the revision case, are not liable to be interfered with, as the transaction of alienation was found to have been effected between non-tribals subsequent to coming into force of the Regulation. Therefore, the said land situated in the scheduled area, is liable to be resumed by the Government after evicting the petitioner in terms of the Regulation.

22. In the result, the writ petition is dismissed. No order as to costs.

V.V.S.RAO, J

G.V.SEETHAPATHY, J

Date: 09.08.2007
Note:
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[1] 2000(4) ALD 443(DB)
[2] 1994 (2) An.W.R. 216
[3] 2002 (4) ALT 669 (DB)
[4] 2003(3) ALT 453 (DB)
[5] 2005(4) ALD 498